APPENDIX A

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

ROBERT M. CARSWELL, JR.,
Plaintiff

vs. AT LAW NO. 51360

STEPHEN S. MURRAY, ET AL,
Defendants

THIS CAUSE CAME ON to be heard on this 8th day of April, 1981, upon the Pleas in Bar and Demurrers filed by Defendants, John M. Milgrim, Dennis Hill and W. H. Berger, and

IT APPEARING TO THE COURT, after reviewing the pleadings, authorities and arguments of the parties in connection with the Pleas in Bar and Demurrers filed February 20, 1981, by Defendants Milgrim, Hill and Berger, that Plaintiff has failed to state a cause of action as to Defendants, Milgrim, Hill and Berger; and

IT FURTHER APPEARING TO THE COURT that Plaintiff had previously been given leave to amend, it is hereby

ADJUDGED, ORDERED and DECREED that the Demurrers filed by Defendants Milgrim, Hill and Berger are sustained and that Plaintiff's Second Amended Complaint for Damages Caused by

Abuse of Power is dismissed, with prejudice, as to Defendants, Milgrim, Hill and Berger.

THIS CAUSE IS CONTINUED.

ENTERED this 8th day of April, 1981.

(signed) Birch Millsap
JUDGE

SEEN AND OBJECTED:

(signed) Robert M. Carswell, Jr.
Robert M. Carswell, Jr.

WE ASK FOR THIS:

(signed) J. Patrick Taves)

David T. Stitt
By: J. Patrick Taves
Assistant Attorney for the County
Co-Counsel for Defendants
Milgrim, Hill and Berger

(signed) Leonard Vance
R. Leonard Vance
Assistant Attorney General
Co-Counsel for Defendants
Milgrim, Hill and Berger

SEEN:

(signed) Roger E. Sanders
Roger Sanders
Counsel for Stephen Murray

A COPY TESTE:
JAMES E. HOOFNAGLE, CLERK
By: (signature illegible)
Deputy Clerk

APPENDIX B

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 17th day of March, 1982.

Robert M. Carswell, Jr, Appellant,

against Record No. 811116
Circuit Court No. L-51360

John M. Milgrim, et al. Appellees.

From the Circuit Court of Fairfax County

Finding no reversible error in the judgment complained of, the court refuses the petition for appeal filed in the above-styled case.

A Copy,
Teste:

Allen L. Lucy, Clerk

By: (signature illegible)
Deputy Clerk

FAIRFAX COUNTY HEALTH DEPARTMENT
Division of Environmental Health
4080 Chain Bridge Road
Fairfax, Virginia 22030 Phone: 691-2201

In cooperation with the
State Department of Health

April 8, 1980

Mr. Robert Carswell
1175 Ballantrae Lane
McLean, Virginia 22101

Re: Malfunctioning Septic System at 1175 Ballantrae Lane, McLean, Va. Tax Map 31-002-32A

Dear Mr. Carswell:

An inspection of the above named property by Mr. John Milgrim, Sanitarian, on April 7, 1980, revealed that the septic field is malfunctioning and overflowing to the ground surface. The entire drainfield appeared to be saturated. This condition is a violation of Chapter 68 of the Fairfax County Code and requires that the septic tank be pumped immediately and as often as necessary to prevent sewage effluent from flowing to ground surface until necessary repairs and/or sanitary sewer connection can be accomplished.

Public sewer is available to your residence and connection thereto is recommended. However, if you wish to pursue the possibility of repairs

to your system the distribution box and septic tank top will need to be uncovered for inspection.

Please contact this office within five (5) days after receipt of this letter and make an appointment to meet our representative at the site to determine what if any repairs are necessary.

Very truly yours,

(signed) W. H. Berger

W. H. Berger, R.S.
Supervising Sanitarian
Environmental Services Section

WHB:JMM:mr

APPENDIX D

FAIRFAX COUNTY HEALTH DEPARTMENT
Division of Environmental Health
4080 Chain Bridge Road
Fairfax, Virginia 22030 Phone: 691-2201

In cooperation with the
State Department of Health

May 14, 1980

Mr. Robert Carswell

1175 Ballantrae Lane

McLean, Virginia 22101

Re: Sewage Disposal System servig 1175 Ballantrae Lane, McLean, Virginia Tax Map 31-1-002-32A

Dear Mr. Carswell:

On May 13, 1980, Mr. Hill, Senior Sanitarian, visited the referenced property at your request to re-evaluate the conditions of the existing septic tank drainfield sewage disposal system.

The inspection revealed that there are two locations in the area of the septic field that show evidence of recent malfunction. These areas were dry on this visit, but, our records do indicate that Mr. John Milgrim, Sanitarian, has observed what appears to be septic effluent standing in the ground surface in these two areas. It is Mr. Hill's opinion, that the drainfield is saturated and can be expected to overflow to ground surface in the previously dis-

cussed areas. These areas are located over the distribution box and at the end of the field.

In his discussion with you at the site, Mr. Hill learned that your septic field had apparently been damaged when the excavation was made for the installation of public sewer on the adjacent property. Mr. Hill feels that four (4) of a possible six (6) septic lines were severed and are no longer in use which would account for the overloaded condition of the remaining two lines that are malfunctioning. We will verify this fact upon inspection of the distribution box when you have it exposed. If this is the case, we can see no feasibly way to reconnect the system for use.

It is our recommendation that you connect the dwelling to the available sanitary sewer. This would be more desirable than installing a new septic field system due to the close proximity of the septic tank to the sewer line (about 20 feet). However, if you wish we will investigate the soil on your property to determine if there is sufficient area available for a new septic field.

Please contact us by June 15, 1980, to advise us as to your decision in this matter. Mean-

while, periodic inspections will be made to determine the frequency of overflow of sewage to the ground surface. If the system should overflow, it will be necessary to have the tank pumped immediately and as often as necessary to prevent this condition.

If we can be of further service please let us know.

Very truly yours,
(signed) W. H. Berger
W. H. Berger, R.S.
Supervising Sanitarian
Environmental Services Section

WHB:DH:mr

APPENDIX E

FAIRFAX COUNTY HEALTH DEPARTMENT
Division of Environmental Health
4080 Chain Bridge Road
Fairfax, Virginia 22030 Phone: 691-2201

In cooperation with the
State Department of Health

June 10, 1980

CERTIFIED MAIL
0085692

Mr. Robert Carswell
1175 Ballantrae Lane
McLean, Virginia 22101

Re: Sewage Disposal Systems at 1175 Ballantrae Lane, McLean, Virginia Tax Map 31-1-002-32A

Dear Mr. Carswell:

This is to confirm the meeting at the subject property between you, Mr. Dennis Hill, Senior Sanitarian, and me on June 5, 1980.

An inspection of the master distribution box revealed sewage back-up to the top of the box. Such a condition is conclusive evidence that the system is no longer functioning properly. In addition, it is obvious from our permit of October 1, 1951, a sketch dated 1975 provided to us by you, and other factors, including your statement to us that portions of the drainfield were severed during the installation of the sanitary sewer and that portions on the system

are on properties owned by others and no longer within your control.

Based on my investigation and other investigations by members of this department, please be advised an approved method of sewage disposal must be provided within sixty (60) days by connecting to the avaliable sanitary sewer or the installation of a subsurface sewage disposal system installed wholly on your property in accordance with Chapter 68 of tne Fairfax County Code.

Enclosed is a copy of Chapter 68. I wish to bring the following sections to your attention:

1. Section 68-1-1 (2) (B); 68-1-1 (3); 68-1-1 (4); 68-1-1 (5)
2. Section 68-1-2 (a); 68-1-2 (b)
3. Section 68-1-3
4. Section 68-1-4 (a)
5. Section 68-1-5 (a)
6. Section 68-1-9; 68-1-9 (a) (3)
7. Section 68-1-16 (a); 68-1-16 (c) (1)
8. Section 68-1-24

After review of the cited code sections, please fell free to contact me should you have any questions or need further information.

Until such time as an approved sewage disposal

system is provided the septic must be pumped as needed to prevent sewage from overflowing to the ground surface.

Very truly yours,

W. H. Berger, R.S.
Supervising Sanitarian
Environmental Services Section

Enclosure: Chapter 68

WHB:mr

APPENDIX F

Facts admitted by Demurrer
in underlying case

The following is set out in pages and of the Record on Appeal in the Supreme Court of Virginia:

a. Defendant Murray relocated and installed a potable water well on his lot 32-D too close to Carswell's septic drainfield, in violation of Section 70-1-11 of the Fairfax County Code.

b. Defendant Murray did this knowingly.

c. Defendants Milgrim and Berger approved this well relocation.

d. Milgrim and Berger knew or should have known from records in the Fairfax County Health Department that this relocation was in violation of Section 70-1-11 of the Fairfax County Code.

e. Milgrim and Berger were negligent in so approving this well location in violation of the Fairfax County Code, as stated.

f. Murray made the initial report to the Fairfax County Health Department of an alleged malfunction of Carswell's septic system.

g. Murray's report was unfounded and he knew it was unfounded.

h. Milgrim also knew this report was unfounded.

i. Milgrim, Hill and Berger abused their

power and authority as officers, employees and agents of Fairfax County and/or the Commonwealth of Virginia.

j. They did this intentionally, knowingly, and without cause.

k. These same persons misused the power and authority of the Fairfax County Health Department to harass, vex and annoy Carswell.

l. They did this knowingly, intentionally, and without justification.

m. These same persons made various on-site visits to Carswell's septic system location.

n. These same persons made apparent "tests" and probings in the soil of Carswell's land.

o. These "tests" were unscientific.

p. These persons caused Carswell to expend monies to have the septic tank of his system pumped out, and to have the distribution box uncovered and then recovered.

q. These same persons caused Carswell to lose time and/or income from his private practice, including loss of clients.

r. These same persons sent Carswell communications requiring him to take certain actions.

s. These communications were unjustified.

t. The allegations admitted, as set forth in items h. through s. above were all part of the efforts by those three defendants to force Carswell to cease and desist from using the septic

system serving his residence.

u. The allegations admitted as set out in items h. through t. above have been commited and are being committed by these three defendants under color of their office for an unlawful and improper purpose

v. Said unlawful and improper purpose is to hide the negligence of Milgrim and Berger in granting Defendant Murray the permit to relocate the potable water well (items a. through e. above) in violation of Section 70-1-11 of the Fairfax County Code.

APPENDIX G

Chapter 68, Fairfax County Code (pertinent sections only are submitted due to the length of this ordinance and the immateriality of so many sections to the case at bar).

ARTICLE 1

Individual Sewage Disposal Facilities

Section 68-1-1. Definitions

(a) For the purposes of this Article, the following words and phrases shall have the meanings respectively ascribed to them by this Section:

(1) Administrative Authority shall mean the Director of Health Services or his duly authorized representative.

(2) An approved method of disposal of sewage shall mean:

(B) Water carriage disposal to an approved individual sewage disposal system;

(3) Individual sewage disposal system shall mean a complete system for collection, treatment and disposal of sewage which is not part of or connected to a sewage treatment works.

(4) Installed, repaired, approved and standard shall be construed to mean "in accordance with the specifications and standards established within this Article."

(5) Malfunction shall mean when an individual sewage disposal system no longer performs its design function including but not limited to events when effluent surfaces or backs up into the building sewer line.

Section 68-1-2 Approved method of disposal of sanitary sewage required for all houses, public buildings, etc.

(a) It is unlawful for any person to use or occupy, or allow to be used or occupied, any house . . . or other structure used for human habitation . . . unless or until such house . . . is supplied or equipped with a method of disposal of sewage approved by the Administrative Authority.

(b) It is unlawful for any person to replace or repair, or allow to be replaced or repaired, any individual sewage disposal system or any part thereof in any manner to improve its operating condition when it has become malfunctioning or insanitary unless such replacement or repair is approved by the Administrative Authority.

Section 68-1-3. Unlawful to discharge sewage to surface.

It is unlawful for any person to permit or allow the discharge of sewage to . . . ground

surface.

Section 68-1-4. Inspection of individual sewage disposal systems by Administrative Authority.

(a) The Administrative Authority is hereby authorized to inspect any individual sewage disposal system maintained on any premises in the County ... for the purpose of ascertaining whether or not such systems are operating satisfactorily. If any such system is found to be malfunctioning, the Administrative Authority shall notify the owners of the premises served thereby to comply with the provisions of Section 68-1-2.

(b) If any person refuses to allow the Administrative Authority to enter the premises ... where any individual system of sewage disposal is maintained ..., the Administrative Authority may proceed after abtaining a search warrant.

Section 68-1-5. Permit required for individual sewage disposal systems.

(a) It is unlawful for any person to install or repair, or allow to be installed or repaired, an individual sewage disposal system or any part thereof without first making application to and obtaining a permit from the Administrative Authority for an individual sewage disposal system.

Section 68-1-24. Use of individual sewage disposal systems ... after same have become malfunctioning or insanitary.

It shall be unlawful for any person ... to use or allow to be used any premises having an individual sewage disposal system ... for the disposal of human excrement after the system ... has become malfunctioning or insanitary.

Section 68-1-26. Prosecution.

Whoever violates any provision of this Article, by doing a prohibited act, or failing to perfomr a required act, or failing to perform permitted acts in the prescribed manner shall be deemed guilty of a misdemeanor and shall, upon conviction, be punishable by imprisonment not to exceed thirty (30) days or by fine not to exceed One Thousand Dollars ($1,000.00) or both. Each day violation of this Article shall continue shall constitute a separate offense.

APPENDIX H

Chapter 70 of the Fairfax County Code - only the pertinent provision, Section 70-1-11, is set forth for purposes of the case at bar.

Section 70-1-11. Site regulations.

(a) All water supplies shall conform with the following general principles regarding site:

(5) All wells ... shall be located at a minimum distance from sources of pollution as set forth in Table I.

Table I

Minumum Safe Distances

Sources of Pollution	Minimum distance (feet)
	Deep wells
Absorption field	100#

The horizontal separation between the sewage absorption system and a deep well may be reduced to fifty feet only when the surface soil or subsoil receiving the sewage is effectively separated from the water supply formation by an extensive continuous impervious strata of clay, hardpan, rock, etc. Also, the well construction shall be such as to exclude surface water and sewage as effectively as did the undisturbed overlying impervious formation.